



marketing alleged in the Complaint made any such representation, and, in any event, the ingredient labeling on the beverage at issue<sup>1</sup> disclosed its contents, thereby clarifying any potential ambiguity. *See, e.g., Kelly v. Cape Cod Potato Chip Co.*, 81 F. Supp. 3d 754, 761-2 (W.D. Mo. 2015) (dismissing plaintiffs’ claim that “natural” marketing was deceptive where label disclosed presence of unnatural ingredients). For these reasons, too, the Complaint is unsustainable, and Defendant’s Motion is properly granted.

2. In addition, Plaintiff’s prayers for injunctive and declaratory relief separately fail because Plaintiff has not alleged the requisite Article III standing necessary to proceed on claims for such relief. *See, e.g., In re Simply Orange Juice Mktg. & Sale Practices Litig.*, No. 4:12-md-02361-FJG, 2017 WL 3142095, at \*6 (W.D. Mo. July 24, 2017) (rejecting injunctive class claims where plaintiffs were “already on notice of defendant’s practices” and did not allege intent to purchase orange juice in future); *Nicosia v. Amazon.com, Inc.*, 834 F.3d 220, 239 (2d Cir. 2016) (plaintiff lacked standing where he failed to allege intent to use Amazon in future to buy food, drug, weight loss products). Because the Plaintiff individually lacks standing, the Court also lacks jurisdiction over the putative class claims for declaratory and injunctive relief. *See Wheeler v. Am. Profit Recovery, Inc.*, No. 4:15CV368 RLW, 2017 WL 44585, at \*2 (E.D. Mo. Jan. 3, 2017). Thus, the claims for this relief must be dismissed on this basis as well.

WHEREFORE, for these reasons and those reasons set forth in the accompanying Suggestions in Support of this Motion, and as further supported by the concurrently-filed Request for Judicial Notice, Defendants respectfully requests that the Court dismiss Defendant’s Complaint in its entirety.

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<sup>1</sup> Judicial notice of this labeling and its contents is requested pursuant to Fed. R. Evid. 201. *See* Defendants’ concurrently-filed Request for Judicial Notice.

DATED: September 27, 2017

By: /s/ Stacey R. Gilman

**BERKOWITZ OLIVER LLP**

Stacey R. Gilman, MO Bar #55690  
sgilman@berkowitzoliver.com  
2600 Grand Blvd., Suite 1200  
Kansas City, MO 64108  
Telephone: (816) 561-7007  
Facsimile: (816) 561-1888

**BAKER BOTTS L.L.P.**

Jonathan A. Shapiro (*pro hac vice*)  
jonathan.shapiro@bakerbotts.com  
101 California Street, Suite 3600  
San Francisco, CA 94111  
Telephone: (415) 291-6204  
Facsimile: (415) 291-6304

Van H. Beckwith (*pro hac vice*)  
van.beckwith@bakerbotts.com  
Monica R. Hughes (*pro hac vice*)  
monica.hughes@bakerbotts.com  
2001 Ross Avenue, Suite 600  
Dallas, TX 75201-2980  
Telephone: (214) 953-6500  
Facsimile: (214) 953-6503

***Attorneys for Defendants Dr Pepper Snapple  
Group, Inc. and Dr Pepper/Seven Up, Inc.***

**CERTIFICATE OF SERVICE**

I hereby certify that on September 27, 2017, I electronically filed the foregoing with the clerk of the court by using the CM/ECF system, which will send notice of filing to all counsel of record.

/s/ Stacey R. Gilman

Attorney for Defendants  
DR PEPPER SNAPPLE GROUP, INC.  
AND DR PEPPER/SEVEN UP, INC.